IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

RSA.No. 258 of 2007()

AS.18/2003 of PRL.SUB COURT,THALASSERY
OS.114/1998 of MUNSIFF COURT, THALASSERY
.....

APPELLANT/APPELLANT/ DEFENDANT

ALLOLATHIL HASSAN HAJI,
S/O.SAIDU MUHAMMED, MERCHANT,
ALLOLATHIL HOUSE,PANNUR AMSOM,DESOM,
THALSSERI.

BY ADV. SRI.C.KHALID
SRI.T.P.SAJID

RESPONDENT/ RESPONDENT/ PLAINTIFF :

ALLOLATHIL RAMLA AGED 43,
W/O.ABOOBACKER, NO OCUPATION
CHULLIYANTAVIDA HOUSE,
CHEKKIAD AMSOM, KURUVANTHERI DESOM,
KURUVANTHERI DESOM,POST PARAKKADAVU,
VADAKARA TALUK.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 541/07 IN RSA 258/07

DISMISSED

12/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO.258 OF 2007

Dated 12th March 2007

J U D G M E N T

Defendant in O.S.114/98 on the file of Munsiff court, Thalassery is the appellant. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for injunction contending that plaint schedule property originally belonged to the uncle of respondent as per partition deed dated 20/5/1974 and under Ext.A1 gift deed dated 8/11/1979 property was transferred to respondent reserving the right to take income from the property to the donor till his death and delivery has also been effected on 10/2/1998. Contending that appellant is attempting to sell the property and he has no right to do so the suit was instituted. Appellant resisted the suit contending that gift deed was never acted upon and possession of the property was never delivered and gift deed was executed to avoid threat of divorce for non payment of dowry, at the request of mother of respondent and subsequently appellant revoked the gift deed under

Ext.B2 on 14/10/1997 and respondent is therefore not entitled to get the decree sought for. Learned Munsiff framed necessary issues. Respondent was examined as PW1 and appellant as DW1. Exts.A1 to A13 and Exts.B1 series and B2 were marked. Learned Munsiff on the evidence found that Ext.A1 gift deed was acted upon and the essentials of a valid gift as provided under Mohammedan Law are satisfied and delivery has also been effected and therefore appellant is not entitled to cancel the gift thereafter and respondent has right and title and possession to the property and granted the decree. Appellant challenged the decree and judgment before Sub court, Thalassery in A.S.18/2003. Learned Sub Judge re-appreciated the evidence and confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in this second appeal.

2. Learned counsel appearing for appellant was heard.

3. Arguments of learned counsel appearing for appellant was that Ext.A1 gift deed was never acted upon and unless delivery of possession of the property gifted was given to respondent, there is no valid gift under Mohammedan Law and in view of Ext.B2 cancellation of Ext.A1 gift, respondent is not entitled to the decree

granted by courts below and therefore judgments are to be set aside.

4. It was argued that though Ext.A1 gift deed was in 1979 mutation was not effected and respondent did not pay basic tax till 1986 and for the first time tax was paid only on 14/10/1986 and evidence on record is insufficient to prove that gift was acted upon and courts below therefore should have upheld the case of appellant and dismissed the suit. Learned counsel also argued that in the light of Ext.B2 gift deed, courts below should not have granted the decree for injunction without seeking a decree for declaration against Ext.B2 cancellation deed and therefore judgments are unsustainable.

5. On hearing learned counsel appearing for appellant and on going through the judgments, I do not find any substantial question of law involved in this appeal. As rightly found by courts below, essential ingredients of a valid gift under Mohammedan Law are 1)a declaration of gift by the donor 2)acceptance of the gift expressly or impliedly by or on behalf of the donee 3)delivery of possession of the subject of the gift by the donor to the donee. Where a donor makes the gift a corpus of a property, but reserves the usufructs

to himself and continues in physical possession of the property, payment of revenue to the government after the date of the gift, amounts to constructive possession of the property. It established the acceptance of gift. Respondent has admittedly paid basic tax from 1986. On the evidence courts below found that the gift was accepted and acted upon. Both the courts below elaborately considered the evidence and found that gift deed has been acted upon. The factual finding was arrived at in the light of settled legal position and evidence on record. It cannot be interfered in exercise of powers of this court under Section 100 of Code of Civil Procedure. When it is found that gift deed was accepted and acted upon, Ext.B2 cancellation deed has no validity at all. In such circumstances, courts below rightly upheld the case of respondent and granted the decree. As no substantial question of law is involved, appeal is dismissed in limine.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.